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10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 SOLARMORE MANAGEMENT
SERVICES, INC., a California
15 corporation; CARL AND BARBARA
16 JANSEN, a married couple,

17 Plaintiffs,

18 v.

19 NIXON PEABODY, LLP, a New York
limited liability partnership; FORREST
20 DAVID MILDER, a married individual,

21 Defendants.
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28

Case No. 2:20-cv-10111 CAS JEM

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
TRANSFER VENUE PURSUANT TO
28 U.S.C. § 1404(A)**

Date: December 21, 2020
Time: 10:00 AM
Ctrm: 8D
Judge: Hon. Christina A. Snyder

Date Filed November 3, 2020

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1
2 **NOTICE OF MOTION AND MOTION TO TRANSFER VENUE**

3 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE that on December 21, 2020 at 10:00 A.M., or as
5 soon thereafter as the Court directs, Defendants Nixon Peabody LLP and Forrest
6 David Milder move the Court to transfer this action to the Eastern District of
7 California.

8 Defendants move to transfer pursuant to 28 U.S.C. § 1404. This Court
9 should transfer venue to the Eastern District because (1) Plaintiffs could have
10 brought this case in the Eastern District; (2) nine criminal and civil cases based on
11 the same facts have concluded or are pending in the Eastern District; (3) one of
12 those cases has the same plaintiff, involves the same 20 funds, and will require
13 similar factual and legal determinations; (4) the federal judge who knows the facts
14 and would preside over these very similar issues is in the Eastern District; and
15 (5) the conduct at issue happened in the Eastern District. This motion is based on
16 this Notice of Motion and Motion, the following Memorandum of Points and
17 Authorities, Defendants' Request for Judicial Notice, all files and records in this
18 action, and such additional matters as may be judicially noticed by the Court or may
19 come before the Court prior to a hearing, if any, on this matter

20 This motion is made following a Local Rule 7-3 conference, which took
21 place on October 21, 2020.

22 Dated: November 20, 2020

KEKER, VAN NEST & PETERS LLP

23 By: */s/ Eric MacMichael*

24 ELLIOT R. PETERS
25 ERIC H. MACMICHAEL
26 BAILEY W. HEAPS
27 DEEVA SHAH

28 Attorneys for Defendants
NIXON PEABODY, LLP and
FORREST DAVID MILDER

1 **I. INTRODUCTION**

2 Plaintiffs Solarmore and Carl and Barbara Jansen (collectively, “Solarmore”)
3 allege that they were the victims of a complex, long-term tax fraud perpetrated by
4 non-party DC Solar. Starting in 2010, DC Solar created investment funds to sell
5 mobile solar generators to investors, who would receive corresponding tax benefits.
6 Solarmore managed at least 20 of these investment funds over the next eight years.
7 But in 2018, DC Solar’s principal employees were charged with wire fraud and
8 money laundering. Seven high-ranking DC Solar employees admitted to operating
9 a tax-credit Ponzi scheme and pleaded guilty in the Eastern District of California
10 before Judge John A. Mendez. The SEC filed a civil suit against the owners of DC
11 Solar, which was also before Judge Mendez in the Eastern District. Eventually,
12 Plaintiff Solarmore also filed suit in the Eastern District of California before Judge
13 Mendez. That case, *Solarmore I*, contained numerous allegations against over 30
14 entities—including professional appraisers, brokers, accountants, tax service
15 providers, and bankers—that Solarmore believed had aided and abetted DC Solar’s
16 fraud in 20 distinct investment funds. *Solarmore I*, which is still ongoing, involves
17 every major professional advisor to DC Solar ***except one***: Nixon Peabody LLP.

18 Inexplicably, months after filing *Solarmore I* in the Eastern District,
19 Solarmore sued Defendants Nixon Peabody LLP and its partner Forrest David
20 Milder (collectively, “Nixon Peabody”) in Los Angeles. This one-off case,
21 *Solarmore II*, involves the same 20 investment funds as *Solarmore I*. *Solarmore II*
22 also parrots many of the allegations in *Solarmore I* verbatim. Nevertheless,
23 although Judge Mendez has presided over ***nine*** cases involving the same facts and
24 even the same parties, Solarmore seeks to have another judge in another court learn
25 the complexities of this massive fraud scheme. If this case had been brought in the
26 Eastern District of California, it would have immediately triggered a notice-of-
27 related-case and a transfer to Judge Mendez. But because *Solarmore II* is before
28 this Court, § 1404(a) governs and compels a transfer to the Eastern District instead,

1 based on the following indisputable facts:

- 2 • Solarmore could have brought this case in the Eastern District.
- 3 • Nine criminal and civil cases based on the same facts have concluded or are
- 4 pending in the Eastern District. These cases include *Solarmore I*, which has
- 5 the same plaintiff, involves the same 20 funds, and will require similar
- 6 factual and legal determinations.
- 7 • The federal judge who knows the facts and will preside over the very issues
- 8 presented in *Solarmore I* and *Solarmore II* is in the Eastern District.
- 9 • Per Solarmore’s own admission, the conduct at issue happened in the Eastern
- 10 District.

11 *See* 28 U.S.C. § 1404(a). This Court should transfer *Solarmore II* to the Eastern

12 District of California to promote judicial economy, conserve resources, and

13 minimize the possibility of inconsistent rulings.¹

14 **II. BACKGROUND**

15 **A. DC Solar commits fraud.**

16 DC Solar was founded in 2009 and, for nearly all of its existence, operated in

17 the Eastern District of California. *See* Dkt. 1-2 at ¶¶ 14-16 (“*Solarmore II*

18 Compl.”). DC Solar’s business model entailed creating investment funds to sell

19 mobile solar generators to sophisticated investors, who would receive substantial

20 tax benefits from their investment. *See id.* ¶¶ Preliminary Statement, 22, 26-27, 40-

21 41. DC Solar would then lease the generators from the investment funds and to

22 third parties, like arenas and concert venues, from whom DC Solar would collect

23 lease payments. *Id.* ¶ 22. DC Solar created Solarmore to serve as the managing

24 member of at least 20 of its investment funds. *See id.* ¶ 23. Plaintiff Carl Jansen

25

26 ¹ Should this case be transferred to the Eastern District, Nixon Peabody will

27 immediately file a Notice of Related Case, pursuant to Eastern District of California

28 Local Rule 123, to relate this case to *Solarmore I*. Second, this motion is

independent of Nixon Peabody’s responsive motions, due on December 11, 2020.

Alec L. v. Jackson, 2011 WL 8583134, at *1 n.1 (N.D. Cal. Dec. 6, 2011) (holding

that a party may bring a motion under § 1404(a) at any time).

1 was recruited to hold a membership interest in Solarmore. *Id.* ¶ 21. DC Solar also
2 retained Nixon Peabody and Milder for the limited purpose of providing an opinion
3 explaining the tax consequence for investors. *Id.* ¶ 29.

4 DC Solar's enterprise collapsed in December 2018 when the FBI raided the
5 company's headquarters. *Id.* ¶ 105. Most high-ranking DC Solar employees have
6 since pleaded guilty to wire fraud, money laundering, and similar charges. *See*,
7 *e.g.*, Dkt. No. 10, *United States v. Jeff Carpoﬀ*, No. 2:20-cr-00017-JAM (E.D.
8 Cal.). Each of these prosecutions occurred in the Eastern District of California
9 before Judge Mendez. The prosecutions arising out of DC Solar's fraud include:

- 10 • *United States v. Jeff Carpoﬀ*, 20-cr-00017-JAM-1 (E.D. Cal.)
- 11 • *United States v. Paulette Carpoﬀ*, 20-cr-00018-JAM-1 (E.D. Cal.)
- 12 • *United States v. Ronald Roach*, 19-cr-00182-JAM-1 (E.D. Cal.)
- 13 • *United States v. Joseph Bayliss*, 19-cr-00182-JAM-2 (E.D. Cal.)
- 14 • *United States v. Robert Karmann*, 19-cr-00222-JAM-1 (E.D. Cal.)
- 15 • *United States v. Ryan Guidry*, 20-cr-00003-JAM-1 (E.D. Cal.)
- 16 • *United States v. Alan Hansen*, 20-cr-00016-JAM-1 (E.D. Cal.)

17 Relatedly, the SEC also litigated its civil action against the owners of DC Solar
18 before Judge Mendez in the Eastern District. *See SEC v. Carpoﬀ*, 20-cv-00180-
19 JAM-AC (E.D. Cal.).

20 **B. DC Solar declares bankruptcy.**

21 Shortly after the FBI raid, the DC Solar entities began filing for bankruptcy
22 in the District of Nevada. Compl. ¶¶ 107-108. The proceedings have since been
23 consolidated and converted from Chapter 11 to Chapter 7. *See* Dkt. Nos. 390, 439,
24 *In re Double Jump*, No. 19-50102-gs (D. Nev. Bkr. 2019).

25 **C. Solarmore brings suit against DC Solar's bankruptcy estate and 26 most of DC Solar's professional advisors.**

27 In late December 2019, Solarmore sought and received permission from the
28 District of Nevada Bankruptcy Court to sue the DC Solar bankruptcy estate and the
other entities it believed had caused it harm. *See* Req. for Judicial Notice in Supp.

1 of Motion to Transfer (“RJN”) Exs. 2, 3 (Dkt. Nos. 1483, 1487, *In re Double Jump*,
2 *Inc.*, No. 19-50102-gs (Bankr. D. Nev.)). Solarmore then filed suit in the Eastern
3 District of California before Judge Mendez, the same judge who had presided over
4 the DC Solar criminal and SEC proceedings described above. *See* RJN Ex. 1
5 (*Solarmore Mgmt. Svc., Inc. v. Bankr. Est. of DC Solar Sols., Inc.* (“*Solarmore I*”),
6 No. 2:19-cv-02544-JAM-DB (E.D. Cal. filed Dec. 17, 2019) (Mendez, J.)).
7 Solarmore stated that venue was “proper in [the Eastern District] . . . because a
8 substantial part of the events or omissions giving rise to [Solarmore’s] claims
9 occurred in Benicia, California, which is located in this judicial district.” *Id.* Dkt.
10 No. 1 ¶ 78. The relevant events were the creation of the 20 investment funds that
11 Solarmore had managed.

12 In *Solarmore I*, Solarmore sued two sets of defendants: (1) the “core
13 defendants,” which include various DC Solar corporate entities, the owners of DC
14 Solar, and some of their associates, *see id.* ¶¶ 7-24; and (2) various professional
15 entities—including another fund managing member, appraisers, brokers,
16 accountants, tax service providers, and bankers—that it believed had aided and
17 abetted DC Solar’s fraud, *id.* ¶¶ 25-53. The *Solarmore I* complaint referenced
18 Nixon Peabody and catalogued the role Solarmore believed Nixon Peabody had
19 played in DC Solar’s operation, but Solarmore elected not to sue Nixon Peabody in
20 that action, *see id.* ¶¶ 145, 162, 262.

21 Solarmore waited nearly a year before filing this action—repeating many of
22 the same allegations as it set forth in *Solarmore I*—against Nixon Peabody and
23 Milder, a tax partner in the firm, in Los Angeles County Superior Court. *See*
24 *Solarmore II* Compl. Solarmore alleges six California state-law claims against
25 Nixon Peabody: (1) Breach of Fiduciary Duty; (2) Breach of Contract; (3) Unjust
26 Enrichment; (4) Negligent Misrepresentation; (5) Legal Malpractice; and (6) Aiding
27 and Abetting Negligent Misrepresentation. The claims against Nixon Peabody in
28 *Solarmore II* are based on the same underlying facts and transactions alleged

1 against the other professional advisors in *Solarmore I*. Solarmore has not provided
2 any explanation for why *Solarmore II* was filed in a state court in Los Angeles and
3 against only Nixon Peabody, despite containing similar claims to *Solarmore I* and
4 despite the numerous references to Nixon Peabody in the *Solarmore I* complaint.

5 Nixon Peabody's counsel accepted service on October 5, 2020. Nixon
6 Peabody then removed the case to the Central District of California for two reasons.
7 See Notice of Removal, Dkt. 1. First, the case is "related to" DC Solar's pending
8 bankruptcy proceeding, although the causes of action here are "non-core." *Id.*; see
9 28 U.S.C. § 157(b)(1). Second, Solarmore's claims, although brought under
10 California law, place Nixon Peabody's interpretation and application of the federal
11 Internal Revenue Code at issue. Notice of Removal, Dkt. 1 ¶¶ 27-28.

12 Now Nixon Peabody asks this Court to transfer the case to the Eastern
13 District of California.

14 **III. ARGUMENT**

15 "For the convenience of parties and witnesses, in the interest of justice," this
16 Court "may transfer any civil action to any other district or division where it might
17 have been brought." 28 U.S.C. § 1404(a). "The purpose of section 1404(a) is to
18 'prevent the waste of time, energy, and money to protect litigants, witnesses and the
19 public against unnecessary inconvenience and expense.'" *Hawkins v. Gerber Prod.*
20 *Co.*, 924 F. Supp. 2d 1208, 1212 (S.D. Cal. 2013) (quoting *Van Dusen v. Barrack*,
21 376 U.S. 612, 616 (1964)). Courts generally consider the threshold question of
22 whether venue would be proper in the transferee court; if so, courts then weigh the
23 "public" interest-of-justice factors and the "private" convenience factors to
24 determine whether to transfer the litigation. *E.g., id.* at 1213-14; *Rubio v.*
25 *Monsanto Co.*, 181 F. Supp. 3d 746, 760-67 (C.D. Cal. 2016).

26 Although Nixon Peabody bears the burden of demonstrating that transfer is
27 proper under Section 1404(a), that burden is substantially less than a transfer under
28 the doctrine of forum non conveniens. *Norwood v. Kirkpatrick*, 349 U.S. 29, 32

(1955) (“Congress, by the term ‘for the convenience of parties and witnesses, in the interest of justice,’ intended to permit courts to grant transfers upon a lesser showing of inconvenience.”) (citation omitted). When ruling on motions to transfer based on § 1404(a), “the court may consider undisputed facts outside of the pleadings.” *Morgan Tire of Sacramento, Inc. v. Goodyear Tire & Rubber Co.*, 60 F. Supp. 3d 1109, 1113 (E.D. Cal. 2014).

“The interest of justice factor,” which includes “judicial economy, ‘may be determinative to a particular transfer motion, even if the convenience of the parties and witnesses might call for a different result.’” *Amazon.com v. Cendant Corp.*, 404 F. Supp. 2d 1256, 1261 (quoting *Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997)). This case should be transferred based on the “interests of justice” factor alone; however, the other two factors also weigh heavily in favor of transfer to the Eastern District.

A. Venue is proper in the Eastern District of California.

The first step in the § 1404(a) analysis is to determine whether the case could have been brought in the transferee forum. *United States ex rel. Hallstrom v. Orexis, LLC*, 2011 WL 13227859, at *1 (C.D. Cal. Apr. 29, 2011). “A civil action may be brought in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated.” 28 U.S.C. § 1391(b).

Here, as Solarmore itself concedes, “a substantial part of the events” occurred in the Eastern District; therefore, venue is proper in that District. As Solarmore explicitly stated in *Solarmore I*, venue related to DC Solar’s scheme was “proper in [the Eastern District] pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to [Solarmore’s] claims occurred in Benicia, California, which is located in this judicial district.” *Solarmore I* Compl., RJN Ex. 1 ¶ 78.

The exact “events or omissions” that gave rise to Solarmore’s claims in

1 *Solarmore I* also underlie Solarmore’s claims in *Solarmore II*. Solarmore’s claims
2 against Nixon Peabody arise from Nixon Peabody’s provision of legal opinions
3 letters to Solarmore and DC Solar related to 20 specific investment funds. *See*
4 *Solarmore II* Compl. ¶ 3 (listing specific funds). Solarmore’s lawsuit ***against every***
5 ***other defendant*** in the Eastern District is predicated on the ***same*** 20 investment
6 funds. Moreover, although Nixon Peabody is not a party in *Solarmore I*, Nixon
7 Peabody and its opinion letters are referenced multiple times in the *Solarmore I*
8 complaint to explain the structure of those same 20 transactions. *See, e.g.,*
9 *Solarmore I* Compl., RJN Ex. 1 ¶ 145 (“Nixon Peabody . . . issued tax opinion
10 letters to Plaintiff Purchasers, and the Funds opining to the valid tax benefits.”); ¶
11 162 (referencing the basic structure of the relevant funds as including “a tax opinion
12 letter from Nixon.”). The factual allegations are also the same: entire portions of the
13 *Solarmore I* complaint appear verbatim in *Solarmore II*. Compare, e.g., *Solarmore I*
14 Compl. ¶¶ 289-292 to *Solarmore II* Compl. ¶¶ 99-103 (describing the Solarsense
15 deal with identical language in both complaints). Both complaints arise from the
16 same DC Solar transactions and involve many similar—and in some cases the
17 same—questions of fact and law.

18 Solarmore can provide no rationale for why the Eastern District is the proper
19 venue for *Solarmore I* but not *Solarmore II*.² By contrast, the *Solarmore I*
20 complaint contains no allegations that the underlying transactions took place in the
21 Central District at all, let alone in any substantial manner. Thus, both cases stem
22 from the same conduct, which substantially occurred in the Eastern District.
23 *Solarmore II* could have been brought in the Eastern District.

24 And just as in *Solarmore I*, *Solarmore II*’s claims also could have been

26 ² Moreover, Judge Mendez also determined the Eastern District was an appropriate
27 venue for both the criminal matters and the SEC enforcement action arising from
28 these same transactions. *See, e.g.,* RJN Ex. 4, *SEC v. Carpoﬀ*, 20-cv-00180-JAM-
AC, Dkt. 1 at ¶ 3 (E.D. Cal. Jan. 24, 2020) (stating venue is proper in the Eastern
District because the “transactions, acts, practices and courses of conduct
constituting violations of the federal securities laws occurred within this district”).

1 brought in federal district court instead of state court. In *Solarmore I*, filed only
2 with the Bankruptcy Court’s permission, Solarmore alleges various state law claims
3 nearly identical to those raised here, like negligence and professional malpractice.
4 Those claims—against almost all of DC Solar’s professional advisors other than
5 Nixon Peabody—arise from the same case or controversy as the claims against the
6 bankruptcy estate. See *Solarmore I* Compl. ¶ 73. And Solarmore asserts that
7 federal subject matter jurisdiction over *Solarmore I* is proper under 28 U.S.C.
8 § 157, which addresses federal jurisdiction over “any or all cases under title 11 and
9 any or all proceedings arising under title 11 or arising in or related to a case under
10 title 11.” See *id.* ¶ 74. Given the similarity of the claims in the two cases,
11 Solarmore cannot maintain that this action is any less related to the ongoing
12 bankruptcy proceeding than *Solarmore I*.

13 Thus, venue is proper in the Eastern District.

14 **B. Transfer will promote the interests of justice.**

15 After determining that venue is proper in the transferee district, the Court
16 must consider whether transfer will promote the interests of justice. “The question
17 of which forum will better serve the interest of justice is of predominant importance
18 on the question of transfer, and the factors involving convenience of parties and
19 witnesses are in fact subordinate.” *Madani v. Shell Oil Co.*, No. C07-04296 MJJ,
20 2008 WL 268986, at *2 (N.D. Cal. Jan. 30, 2008) (internal quotation marks and
21 citation omitted). “The pendency of related actions in the transferee forum is a
22 **significant factor** in considering the interest of justice factor.” *Jolly v. Purdue*
23 *Pharma L.P.*, 2005 WL 2439197, at *2 (S.D. Cal. Sept. 28, 2005) (emphasis added)
24 (citing *A .J. Indus., Inc., v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 503 F.2d 384,
25 389 (9th Cir. 1974)). “Litigation of related claims in the same tribunal is **strongly**
26 **favored** because it facilitates efficient, economical and expeditious pre-trial
27 proceedings and discovery and avoid[s] duplicitous litigation and inconsistent
28 results.” *Amazon.com*, 404 F. Supp. 2d at 1261 (emphasis added) (quoting *Durham*

1 *Prods., Inc.*, 537 F. Supp. at 1243).

2 The pendency of nine related cases—*Solarmore I*, seven DC Solar criminal
3 cases, and a related SEC civil enforcement action—in the Eastern District strongly
4 militates in favor of transfer. All nine cases, but especially *Solarmore I*, arise out of
5 the same nucleus of operative facts that Solarmore alleges here. Because the legal
6 and factual questions presented in the *Solarmore* cases may overlap, having the
7 cases assigned to the same judge would “avoid the possibility of inconsistent
8 judgments.” *Callaway Golf Co. v. Corp. Trade, Inc.*, No. 09–cv–384, 2010 WL
9 743829, at *7 (S.D. Cal. Mar. 1, 2010). As the complaint in *Solarmore I* indicates,
10 Judge Mendez may already have to consider Nixon Peabody’s role to adjudicate
11 Solarmore’s claims against the other professional defendants involved in the same
12 20 transactions (and vice versa). Judge Mendez will also have to determine what
13 Solarmore’s damages are (if any), and whether Solarmore’s claims are barred in
14 whole or in part by *in pari delicto* or contributory negligence.³ Solarmore has yet
15 to proffer any reason why Judge Mendez should not preside over both Solarmore
16 cases.

17 Judicial economy is also served by the Eastern District’s familiarity with the
18 parties and underlying facts in this exceedingly complex case. *Shelby v. Factory*
19 *Five Racing, Inc.*, 2009 WL 481555, at *4 (C.D. Cal. Feb. 23, 2009) (“The
20 ‘interests of justice’ are best served by transferring this case to the United States
21 District Court for the District of Massachusetts, which has already dealt extensively
22 with this dispute between the parties.”). Even where the legal issues could differ,
23 the transferee court’s “respective knowledge of the parties and facts is also
24 relevant.” *Pueblo v. Nat’l Indian Gaming Comm’n*, 731 F. Supp. 2d 36, 40-41

25
26 ³ For many of the relevant investment funds, Solarmore was primarily owned by
27 Jeff Carpoff, the owner of DC Solar who eventually pleaded guilty to wire fraud
28 and money laundering. The defendants in *Solarmore I* and *II* may both ask the
Court to address factual and legal questions related to Mr. Carpoff’s—and thus,
Solarmore’s—involvement with and knowledge of the fraud.

(D.D.C. 2010).⁴ Judge Mendez has “already dealt extensively with this dispute” by overseeing *nine* cases against the DC Solar principals. *Shelby*, 2009 WL 481555, at *4. The seven criminal cases alone span 173 docket entries and have generated seven dispositions from the District Court. Judge Mendez is intimately familiar with the facts surrounding the DC Solar tax-credit scheme. The Eastern District’s experience with each facet of the DC Solar litigation creates a uniquely advantageous position to understand this case.

Thus, the Court should transfer this case to the Eastern District to avoid the “wastefulness of time, energy and money that § 1404(a) was designed to prevent,” “a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts.” *Friedman v. PopSugar, Inc.*, No. 18-CV-05888-CAS, 2018 WL 6016963, at *10 (C.D. Cal. Oct. 29, 2018) (quoting *Cont’l Grain Co. v. The FBL*—585, 364 U.S. 19, 26 (1960)).

C. The parties’ private interests also weigh in favor of transfer.

Although the interests of justice trump the parties’ private interests, the Court may also consider “an ‘individualized, case-by-case consideration of convenience and fairness’” to the parties in analyzing a motion for transfer. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (citation omitted). In *Jones*, the Ninth Circuit set forth ten factors to consider:

- (1) the location where the relevant agreements were negotiated and executed;
- (2) the state that is most familiar with the governing law;
- (3) the plaintiff’s choice of forum;
- (4) the respective parties’ contacts with the forum;
- (5) the contacts relating to the plaintiff’s cause of action in the chosen forum;
- (6) the differences in the costs of litigation in the two forums;
- (7) the availability of compulsory

⁴ See also *Comptroller v. Calhoun First Nat’l Bank*, 626 F. Supp. 137, 141 (D.D.C. 1985) (transferring an action to a district which had cases arising from “the same factual underpinning,” even though the actions in the transferee court involved slightly different legal issues); *D2L Ltd. v. Blackboard, Inc.*, 671 F. Supp. 2d 768, 784 (D. Md. 2009) (“Litigation in the same court avoids duplicative litigation when one court has already invested substantial time and energy in the related case.”).

1 process to compel attendance of non-party witnesses; (8)
2 the ease of access to sources of proof; (9) the presence of
3 a forum selection clause; and (10) the public policy of the
forum state.

4 *Hallstrom*, 2011 WL 13227859, at *1 (summarizing *Jones*, 211 F.3d at 498-99).

5 Many of these factors are archaic in light of technological advances, *see Rubio*, 181
6 F. Supp. 3d at 764, or irrelevant to the proposed transfer here, *e.g.*, *Jones*, 211 F.3d
7 at 498-99 (considering which state is most familiar with the governing law).

8 Nevertheless, the relevant factors weigh heavily in favor of transfer.

9 **1. The contacts with the forum weigh in favor of transfer.**

10 Solarmore has had significant contacts with the Eastern District and those
11 contacts relate directly to their causes of action, far more so than any contacts in the
12 Central District. The *Solarmore II* complaint alleges that the 20 underlying
13 transactions may have some tangential relationship to the Central District because
14 the parties have benefited from doing business in California generally. Outside of
15 that general statement, the *Solarmore II* complaint lacks any allegation that the
16 underlying transactions occurred in the Central District.

17 By contrast, and as Solarmore admits in the *Solarmore I* complaint, “a
18 substantial part of the events or omissions giving rise to [Solarmore’s] claims”—the
19 same 20 underlying transactions—“occurred in Benicia, California” in the Eastern
20 District. *Solarmore I* Compl. ¶ 78. The “operative facts” did not occur within the
21 Central District; each transaction substantially took place in the Eastern District,
22 which is also unsurprisingly where every major criminal proceeding related to this
23 tax-credit scheme occurred. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987)
24 (“[i]f the operative facts have not occurred within the forum and the forum has no
25 interest in the parties or the subject matter, [Plaintiff’s] choice is entitled only to
26 minimal consideration.”) (citing *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949,
27 954 (9th Cir.1968)). Thus, these factors favor transfer.

1 **2. The availability of witnesses, access to sources of proof, and**
2 **convenience of the parties favor transfer.**

3 The convenience of the parties also weighs in favor of transfer. Solarmore's
4 California corporate headquarters are in Sacramento, which is in the Eastern
5 District. *See* RJN Ex. 5 (Solarmore Statement of Information, California Secretary
6 of State (Aug. 19, 2020)). Solarmore is also familiar with the Eastern District,
7 which is where Solarmore opted to file *Solarmore I* against over 30 other
8 defendants. Nixon Peabody's counsel is in the Bay Area, which is considerably
9 closer to Sacramento than Los Angeles. And although Solarmore's local counsel is
10 in Los Angeles, Solarmore's primary counsel is in Phoenix, Arizona. The
11 remaining parties also reside out-of-state and are, therefore, neutral. For example,
12 Plaintiffs Carl and Barbara Jansen reside in Illinois and have not provided any
13 connection to Los Angeles. *Solarmore II* Compl. at ¶ 2. Nixon Peabody is
14 headquartered in Boston, Massachusetts, and Defendant Forrest David Milder is a
15 partner in Nixon Peabody's Boston office. Overall, the Eastern District is more
16 convenient for the parties.

17 Moreover, the majority of the DC Solar witnesses are likely in the Eastern
18 District, where DC Solar was based. These witnesses would be better served by a
19 Sacramento forum than the current Los Angeles forum. The events and transactions
20 described in the *Solarmore II* complaint occurred in the Eastern District. The
21 criminal cases—and the related sources of proof—were in the Eastern District. To
22 the extent Nixon Peabody relies on evidence and testimony from *Solarmore I*, those
23 sources of proof will be more readily accessible in the Eastern District. *See*
24 *Friedman*, 2018 WL 6016963, at *10 (“[E]ven the pendency of an action in another
25 district is important because of the positive effects it might have in possible
26 consolidation of discovery and convenience to witnesses and parties.”). These
27 factors heavily favor transfer.

28 **3. The cost of litigation favors transfer.**

 Given the proximity of the witnesses, the Eastern District will likely be a less

1 expensive forum to litigate this matter. More importantly, Judge Mendez is already
2 familiar with nine other cases related to *Solarmore II*, as well as the underlying
3 entities and transactions. It will be less time-consuming to familiarize the Court
4 with the facts and parties involved and avoid the difficulty of trying to coordinate
5 cases in two different courts. Judicial economy will also reduce costs for the
6 parties, which supports transfer.

7 **4. Any indication of forum shopping weighs in favor of**
8 **transfer.**

9 A significant “factor [under section 1404(a)] is the prevention of forum
10 shopping.” *Wireless Consumers All., Inc. v. T-Mobile USA, Inc.*, 2003 WL
11 22387598, at *5-6 (N.D. Cal. Oct. 14, 2003). “If there is *any indication* that
12 plaintiff’s choice of forum is the result of forum shopping, plaintiff’s choice will be
13 accorded little deference.” *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D.
14 Cal. 2001) (emphasis added). Although courts generally defer to a plaintiff’s choice
15 of forum, such deference is minimal where the operative facts occurred outside that
16 forum. *See Lou*, 834 F.2d at 739. Here, rather than filing its claims in the Eastern
17 District—where the majority of the events occurred, where the seven related
18 criminal cases and the SEC enforcement action were heard, and where *Solarmore I*
19 is ongoing, Solarmore inexplicably filed *Solarmore II* in Los Angeles. This factor
20 also favors transfer to the Eastern District.

21 **IV. CONCLUSION**

22 A court in the Eastern District is already set to consider the *Solarmore I*
23 claims concerning the same plaintiff and the same transactions as *Solarmore II*.
24 That court has already presided over nine cases related to the parties and facts
25 underlying those transactions. The Court should promote judicial economy and
26 convenience by transferring this case to the Eastern District of California.
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1 Dated: November 17, 2020

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